



BURLINGTON NORTHERN INC.

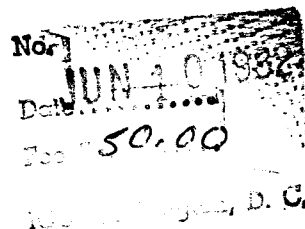
RECORDATION NO. 13658 FILE 1425

June 9, 1982

JUN 10 1982 -3 25 PM

2-161A097

Ms. Agatha L. Mergenovich, INTERSTATE COMMERCE COMMISSION  
Interstate Commerce Commission  
Washington, D.C. 20423



Dear Secretary Mergenovich:

Enclosed are an original and two certified true copies of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Lease of Railroad Equipment, a primary document, dated April 1, 1982.

The names and addresses of the parties to the document are as follows:

Lessor: General Electric Credit Corporation  
260 Longridge Road  
Stamford, Connecticut

Lessee: Burlington Northern Railroad Company  
c/o Burlington Northern Inc.  
1111 Third Avenue  
Seattle, Washington 98101


A description of the railroad equipment covered by the document follows:

113-tri-level auto racks (screened, roofless, doorless with hanged "b" deck) with road numbers BN-5027-5139 inclusive.

A fee of \$50.00 is enclosed. Please stamp the original copy of the Lease enclosed with the recordation data of the Commission and return it to the bearer of this letter:

Mrs. Carolyn H. Kunkel  
Kunkel Transportation Services Inc.  
Pennsylvania Building, Suite 523  
425 13th Street N.W.  
Washington, D.C. 20004

Very truly yours,

  
James W. Becker  
Assistant General Counsel

Enclosures

AVH/sctb7

Burlington Northern Inc./1111 Third Avenue/Seattle, Washington 98101

*Counterpart - Brian Mays*

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

June 10, 1982

Mrs. Carolyn H. Kunkel  
Kunkel Transportation Svcs. Inc.  
425 13th Street, N. W.  
Washington, D. C. 20004

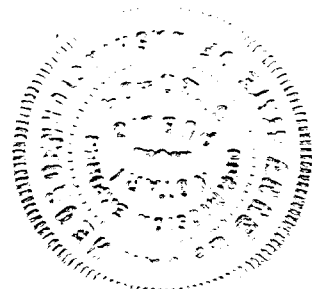
Dear **Madam:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **6/10/82** at **3:25PM**, and assigned re-  
recording number(s) **13658**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)



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RECORDATION NO. **13658** FILE 1425

**JUN 10 1982 -3 25 PM**

**INTERSTATE COMMERCE COMMISSION**

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1982

between

GENERAL ELECTRIC CREDIT CORPORATION,

as Lessor

and

BURLINGTON NORTHERN RAILROAD COMPANY,

as Lessee

113 TRI-LEVEL AUTO RACKS

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\*This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of April 1, 1982 (hereinafter referred to as the "Lease"), between General Electric Credit Corporation, a New York corporation (hereinafter called the "Lessor"), and Burlington Northern Railroad Company, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Lessee"),

### WITNESSETH:

WHEREAS, Lessor has agreed to purchase from the Railcar Division of Portec, Inc. (the "Builder") pursuant to a purchase order assignment (the "Purchase Order Assignment") executed as of the date hereof between the Lessor and the Lessee, a copy of which is attached hereto as Exhibit A, the items of railroad equipment described in Schedule I hereto; and

WHEREAS, Lessee desires to lease from the Lessor each such unit of the railroad equipment described in Schedule I hereto as is named in a Certificate of Acceptance executed by the Lessee pursuant to Section 1 of this Lease (such accepted equipment referred to individually as a "Unit" and collectively as the "Units"), such lease to be at the rentals, for the terms and upon the conditions set forth in this Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants herein to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions.

**SECTION 1. DELIVERY OF UNITS.** The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units. Upon delivery to the Lessee of an item of equipment described in Schedule I, the Lessee will cause an employee of the Lessee to inspect the same, and if such item is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor and on behalf of itself hereunder, and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance"), stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 7 hereof, whereupon such Unit shall be deemed to have been delivered and accepted by the Lessee and shall be subject to all the terms and conditions of this Lease. Any item of equipment not delivered and accepted on or prior to December 31, 1982 shall be excluded from this Lease.

SECTION 2. RENTALS.

(a) Amounts and Dates of Payment. Subject to the terms and conditions set forth in this Lease, the Lessor agrees to lease the Units to the Lessee. The Lessee agrees to pay the Lessor as rentals for each Unit, 18 consecutive semi-annual payments in arrears, on January 1 and July 1 of each year, commencing July 1, 1983, to and including January 1, 1992. The 18 semi-annual rental payments each shall be in an amount equal to the basic lease rate set forth in Schedule II to this Lease multiplied by the Purchase Price of each Unit. The "Purchase Price" of each Unit shall mean the base price set forth therefor in Schedule I, subject to such additional increase or decrease as is agreed to by the Builder, the Lessor, and the Lessee. If on any Closing Date (as defined in Section 4 of the Purchase Order Assignment) the aggregate Purchase Price of Units for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Aggregate Purchase Price set forth in Schedule I (the "Maximum Aggregate Purchase Price"), the Lessor and the Lessee will enter into an agreement excluding from this Lease and the Purchase Order Assignment such items of equipment then proposed to be settled for and specified by the Lessor and the Lessee, as will, after giving effect to such exclusions, reduce such aggregate purchase price to not more than the Maximum Aggregate Purchase Price, and the Lessor shall have no further obligation or liability in respect of such items of equipment so excluded.

(b) Adjustments to Rates. The basic lease rates set forth in Schedule II hereto have been calculated on the assumption that Units will have been settled for on the dates and in the amounts as follows:

<u>Assumed Settlement Date</u>	<u>Assumed Settlement Amount</u>
6/01/82.....	\$1,048,565
7/01/82.....	1,048,565
8/01/82.....	<u>1,048,565</u>
	\$3,145,695

If for any reason any Units are settled for other than on the Assumed Settlement Dates and in the Assumed Settlement Amounts set forth above, then such basic lease rates (and the related Casualty Values set forth in Schedule III hereto) payable by the Lessee hereunder in respect of the Units on and after July 1, 1983 shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's net after-tax economic and accounting yields and cash flows, computed on the same assumptions, including tax rates, as were utilized

by the Lessor in originally evaluating this transaction (such yields and cash flows being hereinafter called "Net Economic Return") to equal the Net Economic Return that would have been realized by the Lessor if all Units had been settled for on the Assumed Settlement Dates in the Assumed Settlement Amounts. Such basic lease rates have also been calculated on the assumption that the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder or published administrative or judicial interpretations of the Code would remain unchanged and in effect up to and on December 31, 1982 as in effect on the date hereof. If for any reason these assumptions prove to be incorrect, then such basic lease rates (and the related Casualty Values set forth in Schedule III hereto) payable by the Lessee hereunder in respect of the Units from and after July 1, 1983, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return to at least equal the Net Economic Return that would have been realized by the Lessor if such assumptions had proved to be correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee promptly after the facts have been determined and the calculations have been made.

(c) Payment in Immediately Available Funds. All payments of rentals and Casualty Values shall be made to the Lessor by payment in immediately available funds at or prior to 11:00 A.M., New York time, to the account of General Electric Credit Corporation, at Manufacturers Hanover Trust Company, 350 Park Avenue, New York, New York, Account No. 135-0-70380, with the following advice: "Attention Transportation Financing Department, re: Burlington Northern 1982 Auto Racks Lease," or at such other place with such other instructions as Lessor shall specify to Lessee in writing from time to time; provided that in the event either the Lessor or any assignee of Lessor pursuant to Section 13 hereof shall notify Lessee in writing that the right to receive payment of an installment or installments of rent and payment of any Casualty Value has been assigned in accordance with said Section 13, the Lessee shall make such payment to any such assignee or assignees at the place designated in such notice.

(d) Payments on Nonbusiness Days. If any of the rental payment dates referred to in this Section 2 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

SECTION 3. NET LEASE; NO SET-OFF, ETC. This Lease is a net lease. The Lessee's obligation to pay rent and other amounts due hereunder shall be absolute and unconditional, and Lessee shall not be entitled to any abatement of rent or other amounts due hereunder, reductions thereof, recoupments or set-offs against said rent or other amounts, including, but not limited to, abatements, recoupments, defenses, reductions or set-offs whether arising or allegedly arising out of claims (present or future, alleged or actual, and including claims arising out of strict tort or negligence of the Lessor) of the Lessee against the Lessor under this Lease or assignment hereof, or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be affected by reason of any defect in or damage to, loss of possession, loss of use or destruction of any or all of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties that rents and other amounts due hereunder shall continue to be payable in all events in the manner and at the times set forth herein unless the obligation to do so shall have been terminated pursuant to the express terms hereof. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF LESSEE.  
The Lessee represents and warrants to the Lessor as follows:

(a) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and is in good standing in such other jurisdictions in which the business and activities of the Lessee require such qualification.

(b) The Lessee has corporate power and authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver this Lease and to fulfill and comply with the terms, condi-

tions and provisions hereof; this Lease has been duly authorized, executed and delivered by the Lessee, and, constitutes a legal, valid and binding agreement, enforceable against the Lessee in accordance with its terms.

(c) There are no actions, suits or proceedings, whether or not purportedly on behalf of the Lessee, pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property rights of the Lessee at law or in equity, or before any commission or other administrative agency, which, if determined adversely to the Lessee, would materially and adversely affect the condition, financial or otherwise, of the Lessee or its ability to perform its obligations under this Lease; and the Lessee is not in default with respect to any order or decree, of which it has knowledge, of any court or governmental commission, agency or instrumentality which would materially and adversely affect the condition, financial or otherwise, of the Lessee.

(d) Neither the execution and delivery of this Lease nor the consummation of the transactions herein contemplated nor the fulfillment of, nor compliance with, the terms and provisions hereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter or the by-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default hereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon any of the Units pursuant to the terms of any such agreement or instrument, other than any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor. The Lessee is not in default, and no event has occurred which, with the giving of notice or lapse of time or both would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it or its property may be bound which would materially and adversely affect the Lessee's ability to perform its obligations under this Lease.

(e) Neither the execution and delivery by the Lessee of the Lease nor the consummation of the transactions herein contemplated nor the fulfillment of, nor compliance with, the terms and provisions hereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality.

(f) On or before the date of delivery and acceptance of the first Unit pursuant to the Purchase Order Assignment and Section 1 of this Lease (the "First Delivery Date"), a UCC-1 financing statement covering all of the items of equipment described in Schedule I hereto shall have been properly filed with the Secretary of State of Minnesota, this Lease will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 and such filing and deposit will protect the Lessor's interest in and to this Lease and in and to the Units and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government is necessary in order to protect the interests of the Lessor under this Lease in and to any of the Units in the United States of America or in Canada.

(g) The Lessee is not entering into this Lease, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA").

(h) No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia, or of Canada or any Province thereof is necessary in connection with the execution, delivery and performance of this Lease.

(i) The Lessee has filed all Federal tax returns and all foreign, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provision for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith.

(j) The Lessee has furnished to the Lessor audited consolidated balance sheets of the Lessee as of December 31, 1980, and December 31, 1981, and related statements of consolidated income, stockholders' equity and changes in financial position for the years then ended. Such financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered by the financial statements. The financial statements present fairly the financial condition of the Lessee at such dates and the results of its operations

and changes in its financial position for such periods; and from the date of the last such balance sheet there has not been any material adverse change in the business or financial condition of the Lessee, except as previously disclosed to the Lessor in a letter from the Lessee dated April 26, 1982.

SECTION 5. CONDITIONS OF PAYMENT. The Lessor's obligation to pay for any Unit shall be subject to no change having occurred after the date hereof in any applicable law or regulations thereunder or interpretation thereof which in the opinion of the Lessor would make its participation hereunder illegal or subject its business or operations to additional regulations, to the terms and conditions of the Purchase Order Assignment and to the receipt, prior to or on the First Delivery Date, of the following:

(a) a written opinion of counsel for the Lessee, stating that:

(i) assuming the due authorization, execution, and delivery by the Lessor, this Lease has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(ii) a UCC-1 financing statement covering all of the items of equipment described in Schedule I hereto has been properly filed with the Secretary of State of Minnesota, this Lease has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86, and no other filing, recording or deposit (or giving notice) with any other Federal, state or local government is necessary in order to protect the rights of the Lessor herein or in any of the Units in any state of the United States of America or in Canada;

(iii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to the knowledge of said counsel, necessary in connection with the execution, delivery and performance of this Lease;

(iv) other than liens and encumbrances which might attach and will be subject and subordinate to the right, title and interest of the Lessor, no mortgage, deed of trust or other lien of any nature whatsoever, which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter will

attach to any of the Units or in any manner affects or will affect adversely the right, title and interest of the Lessor therein;

(v) neither the execution and delivery of the Lease, nor the consummation of the transactions herein contemplated nor the fulfillment of, nor compliance with the terms and provisions hereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon any of the Units pursuant to the terms of any such agreement or instrument, other than any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor; and

(vi) an opinion concerning any other matters incident to the transactions contemplated by this Lease as the Lessor may reasonably request.

(b) a certificate of an officer of the Lessee to the effect that the Lessee's representations and warranties contained in this Lease are true on and as of the First Delivery Date, with the same effect as though made on such date, that the Lessee is not currently in default nor does a condition exist nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under this Lease and that there has been no material adverse change in the business or financial condition of the Lessee from that shown in the Lessee's last audited financial statement, except as previously disclosed to the Lessor in a letter from the Lessee dated April 26, 1982.

(c) an opinion of an independent expert appraiser satisfactory to the Lessor stating that each of the Units will have a useful life of at least 12 years and 6 months and a residual value at the end of the original term and any renewal term of this Lease of at least 20% of the Purchase Price therefor;

(d) the certificates of insurance required to be delivered pursuant to Subsection 10(g) hereof; and

(e) an opinion satisfactory to the Lessor of its tax counsel concerning the tax consequences of its investment in the transactions contemplated by the Lease and the Purchase Order Assignment.



SECTION 6. LESSEE'S DISCLOSURES. The Lessee will deliver or cause to be delivered to the Lessor, (A) as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that he has reviewed the activities of the Lessee during such year and that, to the best of his knowledge, the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein, or if an Event of Default (as defined in Section 11 of this Lease) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (B) (i) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Lessee, as appropriate, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of the balance sheet of the Lessee as at the end of such fiscal year, and of the statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, certified by a firm of nationally recognized independent certified public accountants selected by the Lessee, and (iii) as soon as available, a copy of each Annual Report to the Securities and Exchange Commission which is required to be filed by Burlington Northern Inc. ("BN") or the Lessee and of each prospectus issued in connection with a public offering of securities of the Lessee or BN.

SECTION 7. IDENTIFICATION MARKS.

(a) Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule I attached hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "LEASED FROM GENERAL ELECTRIC CREDIT CORPORATION PURSUANT TO A LEASE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with

appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease, or any UCC-1 financing statement with respect to this Lease or any of the Units, shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lessor's interest in such Units and no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Units.

(b) Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### SECTION 8. INCOME TAX INDEMNITY.

(a) Assumptions. This Lease has been entered into on the assumption that:

(i) the Federal rate of tax on the taxable income of the Lessor in excess of \$100,000 will be 46% and the applicable rate of tax imposed by any state or locality on the taxable income of the Lessor will be the same as that prevailing on March 31, 1982;

(ii) the Lessor will be treated as the purchaser and owner of each of the Units;

(iii) as the purchaser and owner of each of the Units, the Lessor will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended as in effect on the date hereof (the "Code"), and state and local taxing statutes as in effect on the date hereto to an owner of property, including, without limitation, (x) cost recovery deductions under Section 168 of the Code with respect to the unadjusted basis of each Unit,

which basis shall be at least equal to the Purchase Price of each such Unit, computed on the basis of the percentages set forth in Section 168(b)(1)(A) of the Code for "5-year property" placed in service after 1980 and before 1985 (the "Cost Recovery Deductions"), and (y) the investment credit in 1982 pursuant to Section 38 of the Code for "new section 38 property" equal to at least 10% of the basis of each Unit, which basis shall be at least equal to the Purchase Price of each such Unit (the "Investment Credit"); and

(iv) all amounts includable in the gross income of the Lessor with respect to the Units and all deductions and credits allowable to the Lessor with respect to the Units will be treated as derived from, or allocable to, sources within the United States.

(b) No Inconsistent Action. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the assumptions set forth in Subsection (a) of this Section 8, except that the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, the de minimis use of the Units outside of the United States, and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishments of the intent thereof.

(c) Records of Use Outside United States. The Lessee agrees to maintain sufficient records to verify the amount of income, deductions, and credits in respect of each Unit allocable to sources within and without the United States. The Lessee agrees to give to the Lessor, within 30 days after request therefor, written notice describing the amount of income, deductions, and credits allocable to sources within and without the United States and specifying in reasonable detail the basis on which such allocations were made, if such information is required in connection with the preparation of the Lessor's domestic state and local tax returns or in connection with an audit by the Internal Revenue Service of the tax returns of the Lessor. In addition, within 90 days after the end of each calendar year, beginning with the year 1982, the Lessee agrees to furnish to the Lessor a statement to the effect that none of the Units has been used outside the United States during the preceding calendar year, or, if any of the Units has been used outside of the United States during such year, that the amount of such usage was minimal and did not impair the ability of the Lessor to treat, for Federal income tax purposes, all income,

deductions and credits relating to all uses of the Units subject to the Lease during such year as being derived from, or allocable to, sources within the United States, which statement shall be signed by the chief financial officer of the Lessee.

(d) Representations and Warranties of Lessee.

The Lessee represents and warrants that:

(i) when delivered and accepted under this Lease, each of the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code;

(ii) when delivered and accepted under this Lease, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) of the Code from commencing with the Lessor;

(iii) when each Unit is delivered and accepted under this Lease, no other person will have claimed the Investment Credit or the Cost Recovery Deductions with respect thereto;

(iv) at all times during the original term of this Lease and renewal periods, each of the Units will constitute "section 38 property" within the meaning of Section 48(a) of the Code;

(v) at all times during the original term of this Lease and renewal periods, the Lessor will be entitled to treat, for Federal income tax purposes, each item of income, deduction, and credit relating to all Units subject to this Lease as being derived from, or allocable to, sources within the United States;

(vi) each of the Units qualifies as "5-year property", as defined in Section 168(c)(2)(B) of the Code; and

(vii) none of the Units will be used, during the original term of this Lease and renewal periods, "predominantly outside the United States", within the meaning of Sections 168(f)(2) and 48(a)(2) of the Code.

(e) Indemnity for Acts or Misrepresentations of Lessee.

(i) If by reason of any act of commission or omission (other than acts of commission required under this Lease), misrepresentation, breach of any agreement, covenant, or warranty contained in this Lease, or any exhibit hereto, on the part of the Lessee, the Lessor shall lose the right to claim or shall not claim (as

the result of a good faith determination based upon the advice of Tax Counsel of General Electric Company (hereinafter referred to as Tax Counsel) that there is only a de minimis basis in law and fact in support of a conclusion that such claim is allowable), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Investment Credit or the Cost Recovery Deductions (any such event hereinafter referred to as a Loss), then the Lessee shall pay to the Lessor as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such Loss, and on each rental payment date thereafter during the remaining term of the Lease, such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return to equal the Net Economic Return that would have been realized by the Lessor if such Loss had not occurred.

(ii) In the event that the Lessor and the Lessee are unable to agree on the indemnity amount required to restore the Lessor's Net Economic Return, as aforesaid, then the Lessee shall pay to the Lessor, in lieu of the amount provided for in clause (i) of this Subsection (e), such amount, or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, of the United States, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Lessor from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, then the Lessor shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Lessor pursuant to this paragraph (ii) in respect of a Loss, less (y) the amount of all prior payments by the Lessor to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Lessor pursuant to the first sentence of this paragraph (ii). The amount payable to the Lessor pursuant to this paragraph (ii) shall be paid within 30 days after receipt of a written demand therefor from

the Lessor accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (x) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (y) the payment of the additional income tax that becomes due as the result of the Loss). Any payment due to the Lessee from the Lessor pursuant to this paragraph (ii) shall be paid within 30 days after the Lessor realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(f) Excluded Losses. Notwithstanding anything to the contrary set forth in Subsection (e) of this Section 8, no amount shall be payable to the Lessor as an indemnity hereunder in respect of any Loss to the extent that such Loss would otherwise have occurred as a result of the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in a Unit, without the consent of the Lessee, or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit, unless, in each case, an Event of Default (as defined in this Lease) shall have occurred and be continuing; or

(ii) the failure of the Lessor to claim in a timely and proper manner the Investment Credit or the Cost Recovery Deductions or any foreign tax credit (unless the Lessor shall have received an opinion of Tax Counsel that there is only a de minimis basis in law and in fact in support of a conclusion that such claim is allowable); or

(iii) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit the Investment Credit or any foreign tax credit, or the failure of the Lessor to have sufficient income to benefit from the Cost Recovery Deductions, as the case may be; or

(iv) a Casualty Occurrence, if the Lessee shall have paid the Casualty Value in accordance with Section 10 hereof; or

(v) an amendment to, or change in, the Code, any Regulation thereunder, any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service, any applicable state statutes, regulations, or similar documents, or the rate of tax under

the laws of the United States or of any state or locality on the taxable income of corporations, which is enacted or adopted and is effective after January 1, 1983.

(g) Change of Law. If there is any amendment to, or change in, the Code or any Regulation thereunder, any published Revenue Ruling or other document of the Treasury or the Internal Revenue Service, or the rate of tax under the laws of any state or locality on the taxable income of corporations, which is enacted or adopted and is effective on or prior to January 1, 1983, and if such amendment or change affects the Investment Credit allowable with respect to any Unit or the Cost Recovery Deductions allowable with respect to any Unit or the privilege of the Lessor to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or if such amendment or change affects the Federal rate of tax or the rate of tax under the laws of any state or locality on the taxable income of corporations, then the amounts of rentals and the Casualty Values under this Lease will be appropriately adjusted by such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Economic Return to equal the Net Economic Return that would have been realized by the Lessor if such amendment or change had not occurred; provided, however, that the rentals and Casualty Values, as so adjusted shall not result in this Lease failing to satisfy the guidelines that are applied by the Internal Revenue Service in determining, for advance ruling purposes, whether leveraged lease transactions are leases for Federal income tax purposes.

(h) Foreign Tax Credit Indemnity. If any item of income or deduction with respect to any of the Units shall not be treated as derived from, or allocable to, sources within the United States for a given taxable year (any such event hereinafter referred to as a Foreign Loss), then the Lessee shall pay to the Lessor as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by the Lessor, such amount or amounts which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall equal the sum of: (1) the excess of (x) the foreign tax credits which the Lessor would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which the Lessor was limited as a result of such Foreign Loss; and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

(i) Capital Expenditures. If at any time the Lessor is required by the Internal Revenue Service or any state, local or foreign taxing authority to include in its

gross income an amount in respect of any alteration, improvement or addition made to any Unit or as the result of any action required or permitted to be taken by the Lessee pursuant to this Lease or otherwise ("Capital Expenditures"), then the Lessee shall pay to the Lessor, as an indemnity, such amount or amounts which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount or amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Lessor from time to time as a result of such Capital Expenditures plus the amount of any interest, penalties, or additions to tax payable as a result of any such Capital Expenditure. If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Capital Expenditure been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Lessor pursuant to this Subsection (i) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Lessor to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Lessor pursuant to the first sentence of this Subsection (i). The amount payable to the Lessor pursuant to this Subsection (i) shall be paid within 30 days after receipt of the written demand therefor from the Lessor (but not prior to the earlier of (a) the filing of a return or the acceptance of an audit report in which the said inclusion is reflected and (b) the payment by the Lessor of the additional income tax which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Lessor pursuant to this Subsection (i) shall be paid within 30 days after the Lessor realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Lessee agrees to give the Lessor, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of the Lessor.

(j) Contest Provisions.

(i) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of



the Lessor for which the Lessee would be required to indemnify the Lessor pursuant to this Section 8 and if the amount of the indemnity which the Lessee would be required to pay would exceed \$50,000, then, if requested by the Lessee in a timely written request, the Lessor shall request an opinion of Tax Counsel as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Lessor to do so, the Lessor shall contest the proposed adjustment; provided, however, that Tax Counsel shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (a) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (b) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (c) if the Lessor shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. No settlement shall be made of any claim, for which the Lessee would be required to indemnify the Lessor hereunder, without the Lessee's consent. The Lessor shall have full control over any contest pursuant to this Subsection (j) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this Subsection (j), the Lessor may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to the adjustment or such portion, as the case may be.

(ii) The Lessor shall not be required to take any action pursuant to this Subsection (j) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner reasonably satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If the Lessor determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall pay to the Lessor an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Lessor of a refund of any amounts paid by it based on the adjust-

ment in respect of which amounts it shall have previously been paid an equivalent amount by the Lessee, the Lessor shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. Where so obligated, the Lessee shall pay to the Lessor the amount specified in this Subsection (j) promptly after the Lessor has taken all the action that it has agreed in this Subsection (j) to take.

(k) Records and Statements. The Lessee agrees to maintain sufficient records to verify the amount of income, deductions and credits in respect of the Units so as to provide the Lessor with such data as may be required to confirm amounts covered by this Section 8. The Lessor agrees that, upon the written request of the Lessee, it will provide the Lessee with a notice setting forth in reasonable detail the computations and methods used by the Lessor in computing the amount of any indemnity pursuant to this Section.

(l) Recomputation of Casualty Value. If any amount is paid by the Lessee to the Lessor pursuant to this Section 8, the Lessor shall recompute the Casualty Values with respect to the Units in accordance with the manner in which such Casualty Values were originally computed to reflect such payment so as to preserve the Net Economic Return of the Lessor and an officer of the Lessor shall certify to the Lessee the new Casualty Values necessary to reflect such payment, describing in reasonable detail the basis for computing such new Casualty Values. Upon such certification, any such new Casualty Values shall be substituted for the Casualty Values appearing in this Lease.

(m) Additional Definitions. For purposes of this Section 8, the term "Lessor" shall include the corporation named as Lessor herein and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which the Lessor is or may become a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(n) Survival of Indemnities. Notwithstanding any expiration or termination of this Lease, the liability of the Lessee to make indemnification payments pursuant to this Section 8 shall continue to exist until such indemnity payments are made by the Lessee.

(o) Tax Indemnity Provisions Attach at Date of Execution. The provisions of this Section 8 shall apply from the time of execution of this Lease whether or not the other provisions of this Lease come into effect.

(p) Payments. Any payments to the Lessor made pursuant to this Section 8 shall be made by wire transfer of

immediately available funds to the Lessor's account specified in Subsection (c) of Section 2 hereof, or at such other place as Lessor shall specify to Lessee in writing from time to time. The Lessor shall make any return of payments to the Lessee pursuant to this Section 8 in immediately available funds to such bank and/or account in the continental United States as specified by the Lessee in written directions to the Lessor, and if no such direction shall have been given, by check of the Lessor payable to the order of the Lessee and mailed to the Lessee, postage prepaid.

SECTION 9. OTHER TAXES.

(a) Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor or the Lessee, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, payment made pursuant to this Lease, or the property, the income or other proceeds received with respect to property described in this Lease (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to Section 8 hereof) of any foreign country or subdivision thereof, imposed on or measured solely by the net income of the Lessor, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the Lessor being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the Lessor is entitled to a credit against its United States Federal income taxes; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor or any transfer or disposition by the

Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; provided, however, that the Lessee shall not be required to pay any Taxes during that period it may be contesting the same in the manner provided in Subsection (b) hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if in the opinion of the Lessor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder.

(b) Claims; Contests; Refunds. If claim is made against the Lessor for any Taxes indemnified against under this Section 9, the Lessor shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (i) resisting payment thereof if possible, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor in any such proceeding or action) if in the opinion of the Lessor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder. The Lessee agrees to give the Lessor reasonable notice of such contest prior to the commencement thereof. If the Lessor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor shall pay the Lessee the amount of such refund or interest net of expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

(c) Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 9 (except obligations resulting from the last sentence of Subsection (a)), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns, including exemption certificates or affidavits with respect to any sales or use tax, in such manner as to show the interest of the Lessor in the Units as shall be satisfactory to the Lessor or, where not so permitted, will notify the Lessor of such requirement and will prepare and deliver such reports to the Lessor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

(d) Survival. All the obligations of the Lessee under this Section 9 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding the termination of this Lease.

#### SECTION 10. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE.

(a) Definitions of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to Section 12 or 15 hereof, or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof ("Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor with respect thereto. On the next succeeding rental payment date following such notice (such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit payable by the Lessee as of such date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to Section 12 or 15 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to Section 12 or 15 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete

destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity (hereinafter collectively called a "Government") and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in Section 15 hereof.

(b) Requisition by a Government. In the event of the requisition for use by a Government of any Unit for a period which does not exceed the then remaining term of this Lease (except where deemed a Casualty Occurrence pursuant to Subsection 10(a) hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from such Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and all payments received by the Lessor or the Lessee from a Government for the use of such Unit after the term of this Lease or any renewal term thereof shall be paid over to or retained by the Lessor.

(c) Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis, but the Lessee shall notify the Lessor prior to any such purchase if the Lessee is to be the purchaser. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

(d) Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in Subsection 10(a) hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

(e) Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule III hereto opposite such Casualty Payment Date plus on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the fifth anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below corresponding to the relevant time period:

<u>The year ending on the day preceding the following anniversary of the date of the Certificate of Acceptance</u>	<u>Percentage of Purchase Price to be added</u>
First .....	19.23%
Second .....	15.38%
Third .....	11.54%
Fourth .....	7.69%
Fifth .....	3.85%

(f) No Release. Except as hereinabove in this Section 10 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

(g) Insurance To Be Maintained.

(i) The Lessee will, at all times prior to the return of the Units to the Lessor at its own expense, cause to be carried and maintained

(A) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it customarily self-insures equipment owned or leased by it similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and

(B) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Lessor.

The proceeds of any property insurance shall be payable to the Lessor and the Lessee, as their interests may appear. Any policies of insurance carried in accordance with this Subsection 10(g) shall

(X) require 30 days' prior notice of cancellation or material change in coverage to the Lessor and

(Y) name the Lessor as an additional named insured and loss payee as its respective interest may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor) and shall insure the Lessor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor).

Prior to the First Delivery Date and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this Subsection 10(g), the Lessee shall deliver to the Lessor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this Subsection; provided, however, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.



(ii) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest from the date of payment thereof, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, to the extent enforceable, at 110% of the rate per annum which Citibank, N.A., New York, New York, publicly announces from time to time as its prime rate as in effect from time to time (the "Overdue Rate").

(h) Insurance Proceeds and Condemnation Payments. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor; provided, however, that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired; provided, however, that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

#### SECTION 11. DEFAULT.

(a) Events of Default; Remedies. If, during the term of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(i) default shall be made in payment of any amount provided for in Sections 2, 10, or 14 hereof, and such default shall continue for 10 days;

(ii) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(iii) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained in

this Lease and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(iv) any representation or warranty made by the Lessee herein or in any certificate or statement furnished to the Lessor pursuant to or in connection with this Lease proves untrue in any material respect as of the date of issuance or making thereof (other than any representation or warranty contained in Section 8 hereof, the sole remedy for which shall be as set forth in Section 8);

(v) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended; or

(vi) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of

administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(A) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(B) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify; (1) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if

such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (2) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (2) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

(b) Remedies Not Exclusive; Waiver. The remedies in this Section 11 provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

(c) Failure to Exercise Rights is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

(d) Notice of Event of Default. The Lessee also agrees to furnish the Lessor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute

such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 11, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 12. RETURN OF UNITS UPON DEFAULT.

(a) Return of Units. If this Lease shall terminate pursuant to Section 11 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, and shall have attached or affixed thereto any special device considered an accession thereto as provided in Section 19 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in Section 19, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(i) forthwith remove such Unit from any item of railroad rolling stock to which such Unit is attached without damaging such Unit and place such Unit in such reasonable storage space on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(ii) permit the Lessor to store such Units in such reasonable storage space on the Lessee's lines of railroad at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(iii) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be

entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

(b) Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 12, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

### SECTION 13. ASSIGNMENT, POSSESSION AND USE.

(a) Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor to any leasing company or to any banking or financial institution which has a combined capital and surplus of at least \$50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease.

(b) Lessee's Rights to Use the Units, To Permit Use Thereof by Others and to Sublease the Units.

(i) So long as (A) no Event of Default exists hereunder, and (B) the Lessee is complying with the provisions of this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. Without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (ii) of this Subsection 13(b); and the Lessee shall not, without the prior written consent of the Lessor part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (ii) of this Subsection 13(b). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid might become a lien, charge, security interest or other

encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the Lessor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(ii) So long as (A) no Event of Default exists hereunder, and (B) the Lessee is complying with the provisions of this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease; provided, however, that any such sublease to any non-affiliated railroad company shall not exceed a period equal to 180 days for any 12-month period and, provided, further, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Sections 48(a) and 168(f)(2) of the Code, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

(c) Transfer by Lessee Through Merger, Acquisition or Consolidation. Nothing in this Section 13 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation

incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease by an appropriate instrument in writing.

SECTION 14. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE.

(a) Renewal For Successive Periods. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the first extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease or the then extended term, as the case may be, for an additional one-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease. The rental payable during each extended term shall be payable semiannually in arrears on January 1 and July 1 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

(b) Determination of Fair Market Rental.

(1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified



independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

(c) Duty to First Offer. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if the Lessor decides to sell the Units at the end of the original or any extended term of this Lease, then the Lessor shall (at any time not more than 180 days prior to the end of the original term or the first extended term of this Lease), prior to offering the Units to any third party, offer to the Lessee the right to buy all (but not less than all) of the Units at the then Fair Market Value thereof payable in cash on the later of the last day of such term or the date of the determination of the Fair Market Value. The Lessee shall notify the Lessor in writing of its acceptance or rejection of such offer not later than 20 days after receipt of notification of such offer. If the Lessor shall not have received written notice of such acceptance within such 20 day period, the Lessor shall no longer be obligated to offer such Units to the Lessee. Any notice of acceptance given by the Lessee shall be irrevocable.

Fair Market Value shall be determined on the basis of criteria and procedures comparable to those established for the determination of Fair Market Rental under Subsection 14(b) hereof, but the expenses of the appraisal proceedings shall be borne by the Lessor. Notwithstanding anything to the contrary hereinabove contained in this Subsection 14(c), the Lessor's duty to first offer at the end of the original or any extended term of this Lease shall terminate upon the Lessor's leasing the Units to a third party at the expiration of such original or extended term of this Lease.

SECTION 15. RETURN OF UNITS UPON EXPIRATION OF TERM.

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, remove from any item of rolling stock to which such Unit is attached and deliver possession of such Unit to the Lessor in such manner as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit for a period not exceeding 150 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable storage place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 15 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in Section 19 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the

Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. In the event any Unit is not assembled, delivered and stored as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of the Lessee to return the Unit to the Lessor at the termination of this Lease as required by the provisions of this Section 15, an amount equal to the daily equivalent of the rental factor of such Unit as in effect at the time of such termination, for each such day. The provision for such payment shall not be in abrogation of the Lessor's right under this Section 15 to have each Unit returned to it within 30 days after the termination of the original or extended term of this Lease with respect to such Unit.

SECTION 16. RECORDING. The Lessee, at its own expense, will cause a UCC-1 financing statement covering all of the items of equipment described in Schedule I hereto to be filed with the Secretary of State of Minnesota, and will cause this Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Lease. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in The Canada Gazette, and a UCC-1 financing statement covering all of the items of equipment described in Schedule I hereto shall have been filed with the Secretary of State of Minnesota, prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. INTEREST ON OVERDUE RENTALS. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay,

to the extent legally enforceable, an amount equal to interest at the Overdue Rate (as defined in paragraph 10(g)(ii) hereof) on the overdue rentals and other obligations for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

SECTION 18. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE.

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Overdue Rate, shall be payable by the Lessee upon demand except as otherwise provided herein. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

SECTION 19. MAINTENANCE; ADDITIONS AND ACCESSIONS.

(a) Units in Good Operating Order. The Lessee will, at its own cost and expense, maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as herein provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and in compliance with all applicable laws and regulations.

(b) Additions and Accessions.

(i) Except as set forth in Subsection 19(a) and Section 24 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided in Sections 12 and 15, except to the extent such additions, modifications or improvements are made in order to comply with paragraph 19(b)(ii) hereof.

(ii) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and which were installed or were added to such Unit in contravention of its agreements contained in paragraph 19(b)(i) hereof, or (ii) the

cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge security interest or encumbrance shall immediately be vested in the Lessor.

SECTION 20. INDEMNIFICATION.

(a) Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor and its successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's obligations under the Lease or the Lessor's retention of a security interest under the Lease, except to the extent such claim arises from an act or omission of the party claiming indemnification (all of which matters hereinabove set forth in this Subsection being hereinafter called "Indemnified Matters"). The Lessee shall be obligated under this Section 20, irrespective of whether

any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 20 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, but not limited to, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 20, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof, written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Section 20 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 20 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to such Indemnified Person. Nothing in this Section 20 shall constitute a guarantee by the Lessee of the residual value of any Unit.

(b) Survival. The indemnities contained in this Section 20 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable

by, any Indemnified Person. None of the indemnities in this Section 20 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

SECTION 21. NOTICES. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 260 Long Ridge Road, Stamford, Connecticut, Attention of Manager, Operations-Transportation Financing Department,

(b) if to the Lessee, c/o Burlington Northern Inc., 1111 Third Avenue, Seattle, Washington 98101, Attention of Vice President and Treasurer,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 22. REPORTS.

(a) Reports by Lessee. On or before May 31 in each year, commencing with the calendar year 1983, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 7 hereof have been preserved or replaced. The Lessor, shall have the right (but not any obligation) by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor, may request during the continuance of this Lease.

(b) Reports by Lessor. The Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

SECTION 23. DISCLAIMER OF WARRANTIES. THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builder under the Purchase Order Assignment; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

SECTION 24. COMPLIANCE WITH LAWS AND RULES. The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental



standards as more fully described in Section 4(4) of Internal Revenue Service Rev. Proc. 75-21 as modified by Rev. Proc 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner with does not, in the opinion of the Lessor adversely affect the property or rights of the Lessor under this Lease.

SECTION 25. TERM OF LEASE. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance pursuant to the Purchase Order Assignment and Section 1 of this Lease, and, subject to the provisions of Sections 10, 11 and 14 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 2 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 9, 10, 12, 15, 17, 19, 20 and 24 and Subsection 22(b) hereof) shall survive the expiration of the term of this Lease.

SECTION 26. MISCELLANEOUS.

(a) Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(b) Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

(c) Third Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(d) Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

(e) Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and Section 86 of the Railway Act of Canada.

(f) Immunities; No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(g) Fees, Disbursements and Expenses. The Lessor shall pay or cause to be paid the fees and disbursements of its counsel. The Lessee shall cause to be paid the fees and disbursements of its counsel. The Lessee shall also bear (a) the costs of filing, a UCC-1 financing statement covering the Units, and any amendment or supplement thereto, with the Secretary of State of Minnesota, of filing recording and giving public notice or publication as to such filing and recording of this Lease and any amendments or supplements hereto with the Interstate Commerce Commission and with the Registrar General of Canada, as contemplated by this Lease, and (b) the costs of producing and reproducing any such amendments or supplements and the reasonable fees and disbursements of Lessor's attorneys in connection therewith. The Lessor shall have no liability for any of the aforesaid fees, costs, disbursements and expenses or for any other expenses, except as set forth in this Subsection (g). If the transaction contemplated hereby shall not be consummated through no fault of the Lessor, the Lessee shall pay the fees, disbursements and expenses referred to above as payable by the Lessor.


(h) Term Lessor. Whenever the term Lessor is used in this Lease, it shall apply and refer to the Lessor and any of its successors, assigns or agents.

(i) Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for

convenience only and shall not affect any construction or interpretation of this Lease.


GENERAL ELECTRIC CREDIT  
CORPORATION

By

  
Vice President

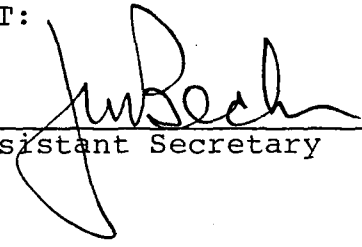
BURLINGTON NORTHERN RAILROAD  
COMPANY

By

  
Vice President

[Corporate Seal]

ATTEST:

  
Assistant Secretary

STATE OF NEW YORK     )  
                              )  
COUNTY OF NEW YORK    )     SS.

On this 26<sup>th</sup> day of April, 1982, before me personally appeared R. C. Burton, Jr. to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Doris J. Bialek  
Notary Public

[Notarial Seal]

My Commission expires

DORIS J. BIALEK  
NOTARY PUBLIC, State of New York  
No. 24-0284525  
Qualified in Kings County  
Cert. filed in New York County  
Commission Expires March 30, 1983

STATE OF NEW YORK     )  
                              )  
COUNTY OF NEW YORK    )     SS.

On this 26<sup>th</sup> day of April, 1982, before me personally appeared Kenneth G. Rusterholz, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL ELECTRIC CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Doris J. Bialek  
Notary Public

[Notarial Seal]

My Commission expires

DORIS J. BIALEK  
NOTARY PUBLIC, State of New York  
No. 24-0284525  
Qualified in Kings County  
Cert. filed in New York County  
Commission Expires March 30, 1983

SCHEDULE I TO LEASE

<u>Quantity</u>	<u>Description</u>	<u>Place of Delivery</u>	<u>Purchase Price</u>	<u>Maximum Aggregate Purchase Price</u>
113	Screened, roofless, doorless, tri-level auto racks with hanged "B" deck, with Road Numbers BN 5027-5139 (inclusive)	Novi, Michigan	\$27,838* each	\$3,520,000

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\* This price is subject to de-escalation or escalation of not more than 10%.

SCHEDULE II TO LEASE

BASIC LEASE RATES FOR UNITS

<u>Date</u>	<u>Percentage of Purchase Price</u>
July 1, 1983.....	7.74899%
January 1, 1984.....	7.74899%
July 1, 1984.....	7.74899%
January 1, 1985.....	7.74899%
July 1, 1985.....	7.74899%
January 1, 1986.....	7.74899%
July 1, 1986.....	7.74899%
January 1, 1987.....	7.74899%
July 1, 1987.....	7.74899%
January 1, 1988.....	7.74899%
July 1, 1988.....	7.74899%
January 1, 1989.....	7.74899%
July 1, 1989.....	7.74899%
January 1, 1990.....	7.74899%
July 1, 1990.....	7.74899%
January 1, 1991.....	7.74899%
July 1, 1991.....	7.74899%
January 1, 1992.....	7.74899%

SCHEDULE III TO LEASE

CASUALTY VALUES FOR UNITS

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
July 1, 1983	94.30%
January 1, 1984	93.23%
July 1, 1984	95.65%
January 1, 1985	95.57%
July 1, 1985	94.96%
January 1, 1986	93.79%
July 1, 1986	92.03%
January 1, 1987	89.65%
July 1, 1987	86.82%
January 1, 1988	83.82%
July 1, 1988	80.62%
January 1, 1989	77.22%
July 1, 1989	73.61%
January 1, 1990	69.78%
July 1, 1990	65.71%
January 1, 1991	61.40%
July 1, 1991	56.84%
January 1, 1992	52.00%

This Schedule does not include ITC recapture, provision for which is contained in Section 10 of the Lease.

PURCHASE ORDER ASSIGNMENT

Dated as of April 1, 1982

Between

GENERAL ELECTRIC CREDIT CORPORATION,

the Lessor

and

BURLINGTON NORTHERN RAILROAD COMPANY,

the Lessee

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## PURCHASE ORDER ASSIGNMENT

THIS PURCHASE ORDER ASSIGNMENT dated as of April 1, 1982 between GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation (the "Lessor"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation (the "Lessee").

A. The Lessee has entered into a purchase order with the Railcar Division of Portec, Inc. (the "Builder") to provide for the manufacture and delivery of the equipment described in Schedule I hereto, a copy of which purchase order is attached hereto as Exhibit A. The purchase order, executed and amended, modified or supplemented to the date hereof, is hereinafter referred to as the "Purchase Agreement". The equipment described in Schedule I and made subject to the terms hereof, is hereinafter referred to collectively as the "Units" and individually as a "Unit".

B. The Lessee desires to lease rather than purchase the Units and the Lessor is willing to acquire certain of the Lessee's rights and interests under the Purchase Agreement as the same relates to the Units and to purchase the Units, all on the terms and conditions hereinafter set forth.

C. Upon purchase of the Units by the Lessor, the Lessee shall thereupon lease the Units from the Lessor under a Lease of Railroad Equipment dated as of April 1, 1982 (the "Lease") between the Lessor and the Lessee.

IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE LESSOR AND THE LESSEE HEREBY AGREE:

### SECTION 1. ASSIGNMENT.

The Lessee does hereby assign and set over to the Lessor all of the Lessee's rights and interests in and to the Units and the Purchase Agreement, except and to the extent reserved below, including, without limitation, in such assignment (a) the right to purchase such Units pursuant to the Purchase Agreement, and the right to take title to such Units and to be named the purchaser in any invoices and any bill or bills of sale, if any, for such Units to be delivered pursuant to the Purchase Agreement, (b) all claims for damages in respect of such Units arising as a result of

any default by the Builder under the Purchase Agreement, and all claims arising thereunder, in respect of such Units, and (c) any and all rights of the Lessee, including, without limitation, the right to compel performance of the terms of the Purchase Agreement and to enforce all claims and receive any and all money due or to become due to the Lessee in respect of such Units or the Purchase Agreement; reserving to the Lessee, however, with respect to each Unit so long and only so long as such Unit shall be subject to the Lease and the Lessee shall be entitled to possession of such Unit thereunder, (x) the rights to demand, accept and retain all rights in and to all property (other than such Unit), data and service which the Builder is obligated to provide, or does provide, pursuant to the Purchase Agreement, (y) all rights, if any, with respect to spare parts as provided in the Purchase Agreement, and (z) the right, if any, to obtain instructions and data pursuant to the Purchase Agreement.

Notwithstanding the foregoing, so long and only so long as the Lessor shall not have notified the Builder in writing that an Event of Default as defined in the Lease has occurred and is continuing, the Lessor authorizes the Lessee, to exercise all rights and powers of the purchaser under the Purchase Agreement, except the Lessee may not exercise any of the rights to purchase and take title to the Units unless prior to the exercise thereof by the Lessor as to the Units, the Lessor shall have delivered to the Builder written notice that the Lessor has released such rights with respect to the Units.

## SECTION 2. CONTINUING LIABILITY OF LESSEE.

It is expressly agreed that, anything herein to the contrary notwithstanding: (a) the Lessee at all times shall remain liable to the Builder to perform all of the duties and obligations of the purchaser under the Purchase Agreement to the same extent as if this Assignment had not been executed, (b) the execution of this Assignment shall not modify any contractual rights of the Builder under the Purchase Agreement and the liabilities of the Builder under the Purchase Agreement shall be to the same extent and continue as if this Assignment had not been executed, and (c) the exercise by the Lessor of any of the rights assigned hereunder shall not release the Lessee from any of the

duties or obligations to the Builder under the Purchase Agreement except to the extent that such exercise by the Lessor shall constitute performance of such duties and obligations.

The Lessor shall not have any obligation hereunder or under the Lease to the Builder in respect of any Unit not delivered and accepted on or before December 31, 1982. Any such Unit for which such obligations are so terminated shall be immediately excluded from the terms and provisions of this Assignment and the Lease, and in the event of such exclusion the Lessee agrees with the Lessor that the Lessee will be obligated to purchase from the Builder, and will accept delivery of and pay for, any Unit or Units so excluded from this Assignment.

### SECTION 3. POWER OF ATTORNEY.

The Lessee does hereby constitute the Lessor the true and lawful attorney of the Lessee, irrevocably with full power (in the name of the Lessee or otherwise) to, if an Event of Default (as defined in the Lease) has occurred and is continuing, ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for money due and to become due under, or arising out of, the Purchase Agreement to the extent that the same have been assigned by this Assignment, to endorse any checks or other instruments or orders in connection therewith, to execute and deliver such further instruments and take such further action as the Lessor deems reasonable to obtain the full benefits hereof and to file any claims or take any action or institute any proceedings which to the Lessor may seem to be necessary or advisable in the premises.

### SECTION 4. PURCHASE OF EQUIPMENT.

The Lessor agrees (subject to the terms and conditions of the Lease) that so long as no Event of Default has occurred under the Lease, on not more than four dates designated by the Lessee to the Lessor by not less than six (6) business days prior written notice ("Closing Dates"), the Lessor will pay in full to the Builder or any other appropriate person, the Purchase Price (as defined in the Lease) of each Unit delivered and accepted by the Lessee under the Lease prior to such Closing Date.

SECTION 5. FURTHER ASSURANCE.

The Lessee agrees that at any time and from time to time, upon the written request of the Lessor, the Lessee will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Lessor may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted.

SECTION 6. GOVERNING LAW.

This Agreement, and all of the rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment.

GENERAL ELECTRIC CREDIT CORPORATION

By \_\_\_\_\_  
Its \_\_\_\_\_

BURLINGTON NORTHERN RAILROAD COMPANY

By \_\_\_\_\_  
Its Vice President

Attachment I  
(to Purchase Order Assignment)

CONSENT AND AGREEMENT

The undersigned, Portec, Inc. (the "Builder") acknowledges receipt of a form of Purchase Order Assignment dated as of April 1, 1982 (the "Agreement") entered into between General Electric Credit Corporation (the "Lessor") and Burlington Northern Railroad Company (the "Lessee"), and as an inducement to and as part of the consideration for the performance by the parties thereto of their obligations thereunder:

1. Consents to the assignment by the Lessee to the Lessor of all of the Lessee's rights and interests in and to the Purchase Agreement (as defined in the Agreement), subject to the reservations referred to in Section 1 of the Agreement.

2. Agrees that, except as set forth in Section 4 of the Agreement, none of the duties or obligations of the Lessee under any agreements of any nature between the Builder and the Lessee have been assigned to or in any manner assumed by the Lessor.

3. Agrees that on each Closing Date referred to in Section 4 of the Agreement, title to the Units then being settled for shall vest in the Lessor, and that on such Closing Date, the Builder will deliver a Bill of Sale for Units covered by the Purchase Agreement signed by the Builder warranting that at the time of delivery of the Units to the Lessee, the Builder had good title to the Units, free and clear of all liens and encumbrances and that the Bill of Sale is valid and effective to transfer, and does transfer, good title to such Units to the Lessor, free and clear of all rights of persons claiming by, through or under the Builder, except the right of the Builder to receive payment in full for such components pursuant to the Purchase Agreement.

Dated:

By \_\_\_\_\_

**Burlington Northern Inc.**

BUYER COPY

PAGE 1 of 2

DIRECTOR, PURCHASING  
176 EAST 5TH STREET  
ST. PAUL, MINNESOTA 55101

**PURCHASE ORDER COPY**

Portec Inc.  
Railcar Div.  
1800 Century Blvd. N.E.  
Suite 680  
Atlanta, GA 30345

**BURLINGTON NORTHERN INC. (10973)****AS DIRECTED BY BN TR**

SHIP VIA

**AS DIRECTED BY BN TRANSPORTATION DEPT.**

SELLER PLEASE FURNISH THIS COMPANY THE FOLLOWING MATERIALS AND SHIP AS SPECIFIED ABOVE.

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS		ITEM DESCRIPTION AND PRICE
		BN STOCK NO.	LINE NO.	
113	each			<p>Confirming verbal order 12/23/81. Refer to letter of intent dated December 4, 1981. Screened, roofless, doorless, Tri-level auto racks with hanged "E" deck. Racks are to be numbered BN 5027-5139. Superstructures to have wide deck for use on 20'-4" low deck TTX flat car.</p> <p>Rack structure to be 90'0" long. Rack structure and car to be generally in accordance with BN specification 1980-J and railroad mechanical committee's specification for enclosed low deck Tri-level auto car dated Sept. 3, 1975 (latest issue) width of car and rack to suit operation over Conrail. Racks are to be equipped for Chrysler service with appropriate deck settings.</p> <p>Racks are to be equipped with AAR approved ratchets and complement of chains with required hooks for Chrysler service.</p> <p>Rack builder to certify that the racks being furnished have been analyzed in accordance with the provisions of AAR specification K-956-76 (latest issue) in the AAR Manual of Standards and recommended practices and meet all requirements contained therein. Attached are duplicate copies of auto rack and car data form to be filled out by rack builder and returned</p>

<b>3</b>		<b>BURLINGTON NORTHERN</b>		<b>EXHIBIT A</b>	
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS.					
12/23/81		CG 10973-1			
NO. DATE		VENDOR NO.		PURCHASE ORDER NUMBER	
CG 879-81					
REQUISITION NUMBERS					
J. J. O'Keefe/ee 612-298-2580					
BUYER'S NAME PHONE NUMBER					
F.O.B.					
Novi, Mich.					
98.99 AFE 82-202					
C.C. AFE/NO NUMBER					
TERMS Net 30 days					
DELIVERY SCHEDULE see below					

**MARK AND SHIP TO**

Burlington Northern Inc

BUYER COPY



BURLINGTON  
NORTHERN

PAGE 2 of 2

DIRECTOR, PURCHASING  
176 EAST 5TH STREET  
ST. PAUL, MINNESOTA 55101

**PURCHASE ORDER COPY**

Portec Inc.  
Railcar Div.  
1800 Century Blvd. N.E.  
Suite 880  
Atlanta, GA 30345

BURLINGTON NORTHERN INC. (10973)

AS DIRECTED BY EN TE

SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS.			
12/23/81 NO DATE		CG 10973-1 PURCHASE ORDER NUMBER	
CGB 379-81 REQUISITION NUMBERS			
J. J. O'Keefe/sc 612-298-2580 BUYER'S NAME PHONE NUMBER			
F.O.B. Kovi, Mich.			
98.99 C.C.		1PF 82-202 APR/WO NUMBER	
TERMS Net 30 days			
DELIVERY SCHEDULE see below			

◀ **MARK AND SHIP TO**

SHIP VIA

AS DIRECTED BY EN TRANSPORTATION DEPT.

SELLER PLEASE FURNISH THIS COMPANY THE FOLLOWING MATERIALS AND SHIP AS SPECIFIED ABOVE.

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS		ITEM DESCRIPTION AND PRICE
		BN STOCK NO.	LINE NO.	
				to Director Mechanical Engineering, Burlington Northern Railroad.
				\$27,838 each price firm - no escalation.
				Delivery start February 1, 1982 at 3 per day.
				cc: T. C. Whitacre
				D. V. Hon
				E. L. Coulter
				E. M. Gleason